

**Notice of Allowability**

Application No.

09/043,433

Examiner

Konata M. George

Applicant(s)

MUNDSCHENK, DAVID D.

Art Unit

1616

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address–

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to August 25, 2005.
2. ☒ The allowed claim(s) is/are 1,6-8,11-14,16-18,22,23 and 27-29.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)           |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment                              |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance  |
|   | 9. <input type="checkbox"/> Other _____   |

### **DETAILED ACTION**

Claims 1, 6-8, 11-14, 16-18, 22, 23 and 27-29 are pending in this application.

#### ***Action Summary***

1. The rejection of claims 1 and 6 as rejected over the judicially created obviousness-type double patenting as being unpatentable over claims 1-4, 14, 16 and 18 of US Patent No. 5,665,332 is hereby withdrawn.
2. Examiner acknowledges the abandonment of copending application 10/405,100 therefore the rejection is withdrawn.

#### ***Examiner's Amendment***

3. An examiner's amendment to the record appears below. Should that changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in an interview with Mr. Philip Goldman on October 17, 2005.

Amend the claims as follows:

#### **IN THE CLAIMS:**

In claim 1, line 8; insert, "wherein the formulation comprises hydrogen peroxide as the chemical agent" after "formulation"

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Cancel claim 5

In claim 6, line 1, delete "claim 5" and insert "claim 1"

In claim 11, line 7; insert, "wherein the formulation comprises hydrogen peroxide as the chemical agent" after "dispenser"

In claims 12 and 16-18, line 1; delete "5" and insert "11"

Cancel claim 15

### ***Remarks***

The above amendment places this case in condition for allowance.

### ***Statement of Reasons for Allowance***

4. The following is an examiner's statement of reasons for allowance:

The claims are allowable over the cited prior art because the prior art does not teach, disclose nor make obvious a system for delivering a chemical agent in the form of a spray or stable foam, wherein the system comprises an aerosol dispenser containing a homogenous stable aqueous formulation comprising the chemical agent and an anionic surface-active agent as a delivery agent. The closest prior art (Jess et al. US 3,976,223) teaches an aerosol package comprising a toothpaste composition comprising sodium lauryl sulfate and hydrogen peroxide, however, it is not taught that the hydrogen peroxide and sodium lauryl sulfate are a homogenous formulation and stored as a single composition in the aerosol dispenser.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

5. Claims 1, -8, 11-14, 16-18, 22, 23 and 27-29 are allowed.

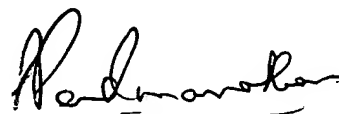
### ***Telephone Inquiries***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is (571) 272-0613. The examiner can normally be reached from 8AM to 6:30PM Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached at (571) 272-0887. The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8000 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

Konata M. George



**SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER**